

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WILFREDO POLANCO,

Plaintiff,

-against-

9:05-CV-0651
(LEK/DRH)

JOHN W. BURGE, Superintendent, *et al.*,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on May 12, 2006, by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 39). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections and amended objections by Plaintiff Polanco, which were filed on May 19, 2006, and May 25, 2006, respectively. Objections (Dkt. No. 40); Amended Objections (Dkt. No. 41).¹

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and

¹ Although Plaintiff asserts in his papers that he is both objecting to Judge Homer’s Report-Recommendation and filing a Motion for Reconsideration of the Report-Recommendation pursuant to Federal Rule of Civil Procedure 60(b), this Court interprets Plaintiff’s filings to actually serve solely as objections to Judge Homer’s Report-Recommendation - and the Docket Sheet reflects same.

has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 39) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that the Order granting *in forma pauperis* status to Plaintiff Polanco (Dkt. No. 4) is **VACATED**; and it is further

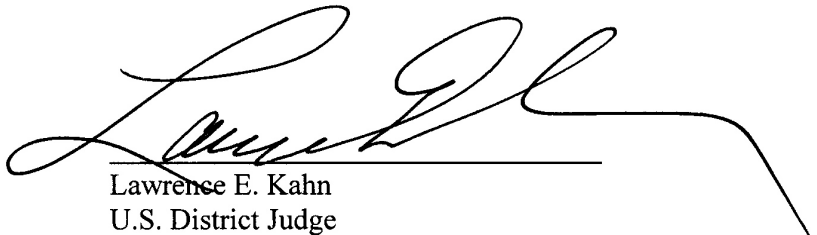
ORDERED, that Defendants' Motion to dismiss (Dkt. No. 16) is **GRANTED** as to all Defendants and all claims, **UNLESS** Plaintiff Polanco pays the filing fee of **TWO HUNDRED AND FIFTY DOLLARS (\$250.00) WITHIN THIRTY (30) DAYS** of the date of the filing of this Order; and it is further

ORDERED, that Plaintiff's Motion for a preliminary injunction (Dkt. No. 28) is **DENIED WITHOUT PREJUDICE** to renewal if the filing fee is paid; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 28, 2006
Albany, New York



Lawrence E. Kahn
U.S. District Judge